Applicant(s):	Jeremy R. Ziegler		
Assignee:	Dell Products L.P.		
Title:	System and Method for Preintegration of Updates to an Operating System		
Serial No.:	10/766,984	Filed:	January 29, 2004
Examiner:	Tuan A. Vu	Group Art Unit:	2193
Docket No.:	DC-05956	Customer No.:	33438

Austin, Texas
December 26, 2007

APPEAL BRIEF UNDER 37 CFR § 41.37

Dear Sir:

Applicant submits this Appeal Brief pursuant to the Notice of Appeal filed in this case on October 22, 2007. The Appeal Brief fee is being paid via the USPTO EFS. The Board is also authorized to deduct any other amounts required for this appeal brief and to credit any amounts overpaid to Deposit Account. No. 502264.

I.   REAL PARTY IN INTEREST - 37 CFR § 41.37(c)(1)(i)

The real party in interest is the assignee, Dell Products L.P. as named in the caption above and as evidenced by the assignment set forth at Reel 014942, Frame 0340.

II.   RELATED APPEALS AND INTERFERENCES - 37 CFR § 41.37(c)(1)(ii)

Based on information and belief, there are no appeals or interferences that could directly affect or be directly affected by or have a bearing on the decision by the Board of Patent Appeals and Interferences in the pending appeal.

III.   STATUS OF CLAIMS - 37 CFR § 41.37(c)(1)(iii)

Claims 10-18 are pending in the application. Claims 1-9 and 19-20 are canceled. Claims 10, 11, 13 and 15-18 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,146,640 issued to Goodman et al. Claim 14 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Goodman. Claim 12 stands rejected under 35 U.S.C. § 103(a) as being

unpatentable over Goodman in view of U.S. Patent No. 7,146,640 issued to Murray et al. The rejection of Claims 10-18 is appealed. Appendix "A" contains the full set of pending claims.

IV.   STATUS OF AMENDMENTS - 37 CFR § 41.37(c)(1)(iv)

No amendments after final have been requested or entered.

V.   SUMMARY OF CLAIMED SUBJECT MATTER - 37 CFR § 41.37(c)(1)(v)

Operating system updates help correct vulnerabilities to malicious programs, such as worms, however, an operating system remains vulnerable to a malicious program addressed by an update while the operating system runs the update and then reboots (page 2, line 18 – page 3, line 2). To address this problem, Claim 10 recites a method that updates an operating system without running the operating system. The source file of the operating system is removed (Figure 2, element 40), the update file is extracted from the operating system update (Figure 2, element 42), the update file is written over the corresponding operating system file (Figure 2, element 44), the operating system is booted (Figure 2, element 48) and the update is registered (Figure 2, element 50; page 6, line 29-page 7, line 15).

VI.   GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL - 37 CFR § 41.37(c)(1)(vi)

Claims 10, 11, 13 and 15-18 stand improperly rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,146,640 issued to Goodman et al. Claim 14 stands improperly rejected under 35 U.S.C. § 103(a) as being unpatentable over Goodman. Claim 12 stands improperly rejected under 35 U.S.C. § 103(a) as being unpatentable over Goodman in view of U.S. Patent No. 7,146,640 issued to Murray et al.

VII.   ARGUMENT - 37 CFR § 41.37(c)(1)(vii)

A. Claim 10 is not anticipated by Goodman

Goodman discloses an intrusion security system that uses a primary operating system and a virtual machine secondary operating environment with a secondary operating system to run an information handling system.

Claim 10 recites, in part, "extracting an update file from an operating system update."

Goodman cannot anticipate Claim 10 because Goodman fails to teach, disclose or suggest all elements recited by Claim 10. For example, Goodman fails to teach, disclose or suggest "extracting an update file from an operating system update" as recited by Claim 10. The Examiner relies upon column 13 §3.1 and col. 8, lines 15-32 for the rejection of Claim 10. Nothing in those sections discusses extracting an update file. The Examiner's comments about replacement of the primary OS of Goodman with the secondary OS are not supported by the text of Goodman. Indeed, Goodman teaches that the secondary OS is kept separate from the primary OS to provide computer security (see e.g., col. 3, lines 31-38). The updates to the primary operating system referenced in column 15 are updates to allow Internet access, not an extracted update file from an operating system update as is recited by Claim 10. In fact, Goodman specifically states that malicious code definition updates are not needed (col. 2, lines 64-66). Accordingly, Applicants respectfully request that the Board reverse the rejections based on Goodman.

VIII.   CLAIMS APPENDIX - 37 CFR § 41.37(c)(1)(viii)

A copy of the pending claims involved in the appeal is attached as Appendix A.

IX.   EVIDENCE APPENDIX - 37 CFR § 41.37(c)(1)(ix)

None.

X.   RELATED PROCEEDINGS APPENDIX - 37 CFR § 41.37(c)(1)(x)

There are no related proceedings.

XI.   <u>CONCLUSION</u>

For the reasons set forth above, Applicant respectfully submits that the rejection of pending Claims 10-18 is unfounded, and requests that the rejection of claims 10-18 be reversed.

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I hereby certify that this correspondence is being electronically submitted to the COMMISSIONER FOR PATENTS via EFS on December 26, 2007.

/Robert W. Holland/

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Attorney for Applicant(s)

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Respectfully submitted,

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10.   A method for creating an operating system image, the image having integrated updates, the method comprising:

removing the source file of the operating system;

extracting an update file from an operating system update;

writing the update file over a corresponding operating system file;

booting the operating system; and

registering the update with the operating system.

11.   The method of Claim 10 wherein the operating system comprises a primary source file and a secondary source file and wherein:

removing the source file further comprises removing the primary source file; and

writing the update file further comprises writing a source file update over the secondary source file.

12.   The method of Claim 11 wherein the primary source file comprises DLLCACHE and the secondary source file comprises I386.

13.   The method Claim 10 wherein the update comprises a Quick Fix Engineering (QFE).

14.   The method of Claim 10 wherein extracting an update file further comprises extracting a signature file to support recognition of the update file by the operating system.

15.   The method of Claim 10 further comprising running an alternate operating system to perform the removing, extracting and writing.

16.   The method of Claim 10 further comprising:

imaging the booted operating system; and

using the image to manufacture information handling systems.

17. The method of Claim 10 further comprising:

identifying a plurality of updates as security updates and non-security updates;

selecting the security updates for the extracting and writing; and

installing the non-security updates after boot of the operating system.

18. The method of Claim 17 wherein the security updates are patches to protect worm vulnerabilities.

EVIDENCE APPENDIX - 37 CFR § 41.37(c)(1)(ix)

None.

RELATED PROCEEDINGS APPENDIX - 37 CFR § 41.37(c)(1)(x)

None. There are no related proceedings.